

AMENDED IN ASSEMBLY MAY 9, 2012

AMENDED IN ASSEMBLY MAY 1, 2012

AMENDED IN ASSEMBLY APRIL 10, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1514

Introduced by Assembly Members Bonnie Lowenthal and Dickinson

January 13, 2012

An act to amend Section 4216.6 of the Government Code, and to add Section 565 to the Public Utilities Code, relating to excavations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1514, as amended, Bonnie Lowenthal. Excavations: subsurface installations: violations.

Existing law generally requires any person planning to conduct an excavation to contact a regional notification center prior to excavation, and, if practical, to delineate the areas to be excavated. Existing law authorizes the Attorney General, a district attorney, or the state or a local agency that issued a permit to excavate to bring an action for the enforcement of a civil penalty against an operator or excavator who negligently or knowingly and willfully violates these and related provisions.

This bill would increase the maximum amounts for civil penalties that may be assessed for negligent or knowing and willful violations, and would specify what are separate violations for purposes of assessing civil penalties. The bill would ~~provide that~~ *authorize*, upon receipt of an investigation report prepared by the Public Utilities Commission *or an operator*, ~~an action may be brought by~~ the Attorney General or the district attorney *to bring an action* in the name of the people of the State

of California for the enforcement of those civil penalties. The bill would also ~~permit~~ *authorize* the Public Utilities Commission or an operator to provide an investigation report to the local or state agency that issued the permit to excavate, and would ~~permit~~ *authorize* the local or state agency to take action to assess those penalties.

The bill would require the commission to include a summary of any damage reported to the commission and of any investigation undertaken in a specified annual report to the Governor and the Legislature.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill are within the act and require action by the commission to implement its requirements, a violation of these provisions would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4216.6 of the Government Code is
2 amended to read:
3 4216.6. (a) (1) Except as provided in paragraph (2), and in
4 addition to all other penalties, ~~any~~ *an* operator or excavator that
5 negligently violates ~~any~~ *a* requirement of this article is subject to
6 a civil penalty in an amount not to exceed ten thousand dollars
7 (\$10,000) for the first violation, and not more than one hundred
8 thousand dollars (\$100,000) for each subsequent violation.
9 (2) In addition to all other penalties, ~~any~~ *an* operator or excavator
10 that knowingly and willfully violates ~~any~~ *a* requirement of this
11 article is subject to a civil penalty in an amount not to exceed fifty
12 thousand dollars (\$50,000) for the first violation, and not more
13 than two hundred fifty thousand dollars (\$250,000) for each
14 subsequent knowing and willful violation.

1 (3) (A) Each violation of a separate requirement of this chapter
2 is a separate violation that is subject to civil penalty pursuant to
3 paragraphs (1) and (2).

4 (B) Each day that a violation of a separate requirement of this
5 chapter takes place is a separate violation that is subject to civil
6 penalty pursuant to paragraphs (1) and (2).

7 (C) Multiple separate violations as specified in this paragraph
8 arising from a single excavation performed shall each only be
9 subject to the maximum civil penalty for a first violation if the
10 operator or excavator has not previously been subject to a civil
11 penalty pursuant to this section.

12 (4) Except as otherwise specifically provided in this article, this
13 ~~section is not intended to~~ *does not* affect any civil remedies
14 otherwise provided by law for personal injury or for property
15 damage, including any damage to subsurface installations, ~~nor is~~
16 ~~this section intended to~~ *does this section* create any new civil
17 remedies for those injuries or that damage.

18 (5) This article ~~shall not be construed to~~ *does not* limit any other
19 provision of law granting governmental immunity to state or local
20 agencies or to impose any liability or duty of care not otherwise
21 imposed by law upon ~~any~~ a state or local agency.

22 (b) (1) Upon receipt of an investigation report prepared by the
23 Public Utilities Commission *or an operator*, an action may be
24 brought by the Attorney General or the district attorney in the name
25 of the people of the State of California for the enforcement of the
26 civil penalty pursuant to this section. Alternatively, the Public
27 Utilities Commission or an operator may provide an investigation
28 report to the local or state agency that issued the permit to excavate
29 and the local or state agency may take action to assess a civil
30 penalty pursuant to this section. If penalties are collected as a result
31 of a civil suit brought by the Attorney General, a district attorney,
32 or a state or local agency that issued a permit to excavate, for
33 collection of those civil penalties, the penalties imposed shall be
34 paid to the prosecuting agency. If more than one agency is involved
35 in enforcement, the penalties imposed shall be apportioned among
36 them in a manner that will fairly offset the relative costs incurred
37 by the agencies in collecting these fees.

38 (2) ~~Nothing in this section shall be construed to~~ *This section*
39 *does not* provide additional jurisdiction to the Public Utilities
40 Commission.

1 SEC. 2. Section 565 is added to the Public Utilities Code, to
2 read:

3 565. (a) Subject to Section 583, the commission may provide
4 the Attorney General, the district attorney for the county in which
5 the damage occurred, the local or state agency that issued the
6 permit to excavate, or the United States Department of
7 Transportation's Pipeline and Hazardous Materials Safety
8 Administration, a copy of an investigation report to take
9 enforcement action pursuant to subdivision (b) of Section 4216.6
10 of the Government Code.

11 (b) The commission shall include a summary of any damage
12 reported to the commission and of any investigation undertaken
13 in the report submitted to the Governor and Legislature pursuant
14 to paragraph (4) of subdivision (a) of Section 321.6.

15 SEC. 3. No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.